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Attorney for Plaintiff
 IO GROUP, INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

IO GROUP, INC., a California corporation,)
)
 Plaintiff,)
)
 vs.)
)
 DAVID FOREST, an individual, FOREST)
 ENTERPRISES, aka DAVID FOREST)
 ENTERTAINMENT, a business entity type)
 unknown, JACK RINELLA, an individual,)
 RINELLA SERVICES, a business entity)
 type unknown, GRADY AVANT, an)
 individual, CYBERTWIST INTERACTIVE)
 MULTIMEDIA, INC., a Michigan)
 Corporation,)
)
)
)
)
 Defendants.)
 -----)

CASE NO.: _____

COMPLAINT:

(1) COPYRIGHT INFRINGEMENT;
 (2) STATUTORY UNFAIR
 COMPETITION;
 (3) CALIFORNIA COMMON LAW
 UNFAIR COMPETITION;
 (4) STATUTORY UNAUTHORIZED
 COMMERCIAL USE OF A
 PHOTOGRAPH;
 (5) CALIFORNIA COMMON LAW
 MISAPPROPRIATION OF THE RIGHT
 OF PUBLICITY; AND
 (6) AN ACCOUNTING

JURY TRIAL DEMANDED

INTRODUCTION

1. This is an action by Io Group, Inc. a California corporation, dba Titan Media
 ("Titan Media"), to recover damages arising from infringement of Titan Media's copyrights in its
 photographic images by Defendants David Forest, Jack Rinella and Grady Avant in their

1 individual capacities and through various business entities owned or controlled by them, and to
2 enjoin all Defendants from future infringement. Forest is an unregistered talent agent who has
3 distributed, through his Internet website, certain Titan Media-owned photographs of Jan Milstead
4 (an individual who also uses the “stage name” or pseudonym “Chris Steele”) whom he purports to
5 represent as a model and actor. Jack Rinella, Rinella Internet Services, Grady Avant, and
6 Cybertwist Interactive Multimedia, Inc. at various times maintained Defendant Forest’s website,
7 www.forestmen.com, the Internet web site by and through which the subject photographs were
8 posted and distributed. Cybertwist Interactive, Inc. is the registered owner of the domain name
9 www.forestmen.com.
10
11

12 **THE PARTIES**

13 2. Io Group, Inc. is a California corporation doing business as “Titan Media,” with its
14 principal place of business located at 121 Capp Street, San Francisco, California 94110. Titan
15 Media produces markets and distributes adult entertainment products, including Internet website
16 content, audiovisual works, photographs, etc.
17

18 3. Defendant David Forest is an individual residing in the State of California, County of
19 Los Angeles and is, or was, carrying out the activities and/or causing the injuries and damages
20 complained of herein in this judicial district and elsewhere.
21

22 4. On information and belief, Defendant Forest Enterprises aka David Forest Entertainment
23 is a business entity, type unknown, located in California and under the ownership and/or control of
24 David Forest and is, or was, carrying out the activities and/or causing the injuries and damages
25 complained of herein in this judicial district and elsewhere.
26
27
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1 11. The Court has personal jurisdiction over Defendants. On information and belief,
2 Defendants solicit, transact, and are doing business within the State of California; have committed
3 unlawful and tortuous acts both within and outside the State of California causing injury in
4 California; and are regularly doing or soliciting business or engaging in a persistent course of
5 conduct in the State. Plaintiff's claims arise out of the conduct that gives rise to personal
6 jurisdiction over Defendants.
7

8 **INTRADISTRICT ASSIGNMENT**

9 12. Pursuant to United States District Court, Northern District Civil Local Rules 3-2(c), 3-2(d),
10 and 3-5(b) assignment to the San Francisco Division is proper because a substantial part of the
11 infringement and other wrongful conduct alleged occurred in San Francisco County.
12

13 **VENUE**

14 13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2), and 1392.
15

16 **FACTS COMMON TO ALL CLAIMS**

17 Plaintiff Titan Media Owns Federally Registered Copyrights of Various Photographs

18 14. Plaintiff Titan Media produces and distributes adult-oriented audiovisual works in video
19 and DVD formats. Plaintiff uses promotional photographs to assist in the marketing of its
20 audiovisual works. Additionally, Plaintiff maintains a website by and through which high-
21 resolution versions of such promotional photographs and other content can be viewed by
22 individuals who pay a monthly subscription fee.
23

24 15. Upon occasion Plaintiff delivers such promotional photographs to various individuals in
25 order to promote the audiovisual works with which said photographs are associated. These
26 promotional images are distributed with a Terms of Use document setting forth the conditions and
27 limitations on the use of the corresponding photographs. An electronic version of the Terms of
28

1 Use document also appears on the same CD-ROM upon which the images are delivered. Under
2 the Terms of Use, Plaintiff permits users of the images to put low-resolution water-marked images
3 on the users' Internet sites. High-resolution images without water-marks are made available for
4 use in print, but not for Internet use.
5

6 16. On or about July 11, 2000 Plaintiff delivered to Defendant David Forest a CD-ROM with
7 eight Internet images and six print images organized in folders labeled "Internet Images" and
8 "Print Images" respectively. True and correct copies of four Internet images are attached hereto as
9 Exhibit A and incorporated herewith. True and correct copies of three print images are attached
10 hereto as Exhibit B and incorporated herewith. A cover letter and a copy of Titan's Terms of Use
11 also appeared on the CD-ROM. Plaintiff included Hard copies of the cover letter and the Terms of
12 Use in the same package delivering the CD-ROM. A true and correct copy of said cover letter is
13 attached hereto as Exhibit C and incorporated herewith in its entirety. A true and correct copy of
14 the Terms of Use document is attached hereto as Exhibit D and incorporated herewith in its
15 entirety.
16
17

18 17. In 1999, Plaintiff produced the audiovisual work, *Heat* and its related promotional
19 materials. Plaintiff holds a valid copyright in *Heat* (including all associated photographic and
20 graphic material) that was duly and properly registered with the United States Copyright Office on
21 November 7, 2000. A true and correct copy of the Copyright Registration Certificate for *Heat*,
22 which bears Registration No. PA 1-017-633, is attached hereto as Exhibit E and incorporated
23 herewith in its entirety.
24

25 18. Jan Milstead, an individual who is also known as "Chris Steele," appeared in Plaintiff's
26 audiovisual work *Heat* and in a number of associated promotional photographs. On May 7, 2000,
27 Milstead signed a release whereby he transferred all his rights in said photographs to Plaintiff. A
28

1 true and correct copy of this release is attached hereto as Exhibit F and incorporated herewith in its
2 entirety.

3 Defendants Willfully Infringed Plaintiff's Registered Copyrights

4
5 19. Defendant Forest is engaged in representing various individuals who perform in adult
6 movies, including Jan Milstead who appeared in Plaintiff's audiovisual work *Heat*. Further,
7 Forest owns and operates the website www.forestmen.com whereby individuals who pay a
8 monthly subscription fee can view and download pictures of the individuals Forest represents.

9
10 20. On or about September 13, 2001, during a routine inspection of Internet sites, an employee
11 of Plaintiff discovered nineteen Titan Media copyrighted images of "Chris Steele" on the website
12 www.forestmen.com. Six of these copyrighted images did not bear the required watermarks and,
13 on information and belief, had been uploaded from the promotional CD-ROM produced by
14 Plaintiff. The remaining thirteen copyrighted images had been scanned from a high-resolution
15 layout in "All Man" magazine. Plaintiff had not authorized the use of any of the images in the
16 manner in which they were displayed on the www.forestmen.com website.

17
18 21. On information and belief, Defendants Jack Rinella, Rinella Services, Grady Avant and
19 Cybertwist Interactive Multimedia, Inc. control or controlled the formatting, posting and other
20 technical matters associated with the website www.forestmen.com.

21
22 22. Defendant Cybertwist Interactive Multimedia, Inc. is the registered owner of the domain
23 name www.forestmen.com.

24
25 23. On or about September 21, 2001, Plaintiff sent by certified mail to Defendants David
26 Forest Productions, Cyberbertwist Interactive, and Rinella Internet Services a letter demanding
27 that they cease and desist the infringement of Plaintiff's copyrighted photographs. A true and
28 correct copy of this letter is attached hereto as Exhibit G and incorporated herewith in its entirety.

1 24. In the April 2002 edition of *The Guide*, a travel magazine, a Titan Media-copyrighted
2 photograph of “Chris Steele” appeared in an advertisement with a Forest Entertainment photo
3 credit. A true and correct copy of this advertisement is attached hereto as Exhibit H and
4 incorporated herewith in its entirety.
5

6 25. As recently as June 20, 2002, most of the Titan Media-copyrighted images identified in
7 paragraph 20, above, were still accessible on www.forestmen.com.
8

9 **FIRST CAUSE OF ACTION**

10 **(Copyright Infringement – 17 U.S.C. §501)**

11 26. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
12 paragraphs 1 through 25, inclusive.

13 27. Plaintiff is the sole owner of the photographs at issue and of all corresponding copyrights
14 and Certificates of Registration.
15

16 28. Defendants, and each of them, have infringed the copyrights in Plaintiff’s photographs by
17 posting and distributing infringing materials on and through the www.forestmen.com website
18 without proper approval or authorization from Plaintiff.

19 29. Defendants’ conduct has been willful within the meaning of the Copyright Act. At a
20 minimum, Defendants acted with willful blindness to and in reckless disregard of Plaintiff’s
21 registered copyrights.
22

23 30. As a result of their wrongful conduct, Defendants are liable to Plaintiff for copyright
24 infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered, and will continue to suffer,
25 substantial losses, including but not limited to damage to its business reputation and goodwill.
26 Plaintiff is entitled to recover damages, which include its losses and any and all profits Defendants
27
28

1 have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Plaintiff is
 2 entitled to statutory damages under 17 U.S.C. § 504(c).

3 31. In addition, because Defendants' infringement has been willful, the award of statutory
 4 damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

5 32. Plaintiff is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order
 6 impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Plaintiff has no
 7 adequate remedy at law for Defendants' wrongful conduct because, among other things, (a)
 8 Plaintiff's copyrights are unique and valuable property which have no readily determinable market
 9 value, (b) Defendants' infringement harms Plaintiff's business reputation and goodwill such that
 10 Plaintiff could not be made whole by any monetary award, and (c) Defendants' wrongful conduct,
 11 and resulting damage to Plaintiff is continuing.

12 33. In addition, Plaintiff is entitled to recover its attorneys' fees and costs of suit pursuant
 13 to 17 U.S.C. § 505.

14 **SECOND CAUSE OF ACTION**

15 **(Unfair Competition – Cal. Bus. & Prof. Code § 17200 et seq.)**

16 34. Plaintiff repeats and incorporates by this reference each and every allegation set forth
 17 in paragraphs 1 through 34, inclusive.

18 35. The acts and conduct of Defendants, and each of them, as alleged above in this
 19 Complaint constitute unfair competition as defined by California Business & Professions Code §
 20 17200 et seq.

21 36. The acts and conduct of Defendants, and each of them, are likely to cause confusion
 22 and mistake among customers, end users, and the public as to the origin or association of
 23 Defendants' infringing Titan Media photographs. The acts and conduct of Defendants are likely
 24

1 to lead the public to conclude incorrectly, that the infringing photographs are sponsored or
 2 authorized by Plaintiff Titan Media. Moreover, the acts and conduct of Defendants render
 3 Plaintiff's photographs readily available to the public in an easily downloadable format, thereby
 4 enabling further distribution and further harm to Plaintiff.
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6 37. As a result, Defendants should be required to disgorge any profit or gain as a result of
 7 said wrongful activity.

8 **THIRD CAUSE OF ACTION**

9 **(California Common Law Unfair Competition)**

10 38. Plaintiff repeats and incorporates by this reference each and every allegation set forth
 11 in paragraphs 1 through 37, inclusive.
 12

13 39. The acts and conduct of Defendants, and each of them, as alleged above in this
 14 Complaint constitute unfair competition pursuant to the common law of California.
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16 40. Defendants' conduct as alleged above has damaged and will continue to damage
 17 Plaintiff's goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to
 18 Defendants in an amount unknown at the present time.

19 **FORTH CAUSE OF ACTION**

20 **(Unauthorized Commercial Use of a Photograph – Cal. Civ. Code § 3344)**

21 41. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
 22 paragraphs 1 through 40, inclusive.
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24 42. Plaintiff's copyrighted works embody images of an actor whose pseudonym is "Chris
 25 Steele." Said actor executed a written agreement with Plaintiff under which Plaintiff became the
 26 exclusive proprietor of the actor's rights of publicity on the images of him that are embodied in
 27 Plaintiff's works.
 28

1 43. All rights of publicity in respect of those images have at all times been exclusively
2 administered from within San Francisco, California.

3 44. Defendants have infringed the rights of publicity owned and controlled by Plaintiff by
4 reproducing the persona of the actor "Chris Steele" for commercial gain without Plaintiff's
5 consent.
6

7 45. As a direct and proximate result of Defendants' conduct as aforesaid, Plaintiff has been
8 damaged by lost income in an amount to be determined at trial.

9 46. Defendants, and each of them, acted deliberately to injure Plaintiff and otherwise in
10 conscious disregard of Plaintiff's rights. Further, Defendants performed these acts, or otherwise
11 authorized, ratified or had knowledge of them and thereby acted in conscious disregard of
12 Plaintiff's rights. Defendants' conduct as alleged above has damaged and will continue to damage
13 Plaintiff's goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to
14 Defendants in an amount unknown at the present time.
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17 47. Defendants' conduct justifies an award of exemplary or punitive damages in an amount
18 sufficient to punish the Defendants and to make examples of them to others as provided for in Cal.
19 Civ. Code § 3344(a).

20 48. Plaintiff is entitled to recover its attorneys' fees and costs of suit pursuant to Cal. Civ.
21 Code § 3344(a).
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23 **FIFTH CAUSE OF ACTION**

24 **(California Common Law Misappropriation of the Right of Publicity)**

25 49. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
26 paragraphs 1 through 48, inclusive.
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1 50. The acts and conduct of Defendants, and each of them, as alleged above in this Complaint
2 constitute a misappropriation of the Right of Publicity pursuant to the common law of California.

3 51. Defendants' conduct as alleged above has damaged and will continue to damage Plaintiff's
4 goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to
5 Defendants in an amount unknown at the present time.
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7 **SIXTH CAUSE OF ACTION**

8 **(Accounting)**

9 52. Plaintiff repeats and incorporates by this reference each and every allegation set forth in
10 paragraphs 1 through 51, inclusive.
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12 53. Plaintiff is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and
13 all profits of Defendants that are attributable to the acts of infringement herein described.

14 54. Plaintiff is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages
15 or statutory damages sustained by virtue of Defendants' acts of infringement.
16

17 55. The amount of money due from Defendants to Plaintiff is unknown to Plaintiff and cannot
18 be ascertained without a detailed accounting by Defendants of the precise number of subscribers to
19 Defendants' website and the number of "hits" to the website and various pages therein.

20 56. Accordingly, Plaintiff is entitled to and hereby demands a full accounting from
21 Defendants.
22

23 **JURY DEMAND**

24 57. Plaintiff hereby demands a jury trial in this case.

25 **PRAYER**

26 WHEREFORE, Plaintiff Titan Media respectfully requests judgment as follows:
27

- 28 (1) That the Court enter a judgment against Defendants that they have:

- a. willfully infringed Plaintiff's rights in federally registered copyrights under 17 U.S.C. § 501.
- b. engaged in unfair competition in violation of California common law and California Bus. & Prof. Code § 17200 et. seq. and
- c. willfully violated Plaintiff's rights of publicity in violation of California common law and California Civ. Code § 3344.

(2) That the Court issue injunctive relief against Defendants, and that Defendants, their agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendants, be enjoined and restrained from copying, posting or making any other infringing use or infringing distribution of audiovisual works, photographs or other materials protected by Plaintiff Titan Media's registered copyrights;

(3) That the Court enter an order of impoundment pursuant to 15 U.S.C. § 1116(a)(d)(1)(A), 17 U.S.C. §§ 503 and 509(a), and 28 U.S.C. § 1651(a) impounding all infringing copies of Plaintiff's audiovisual works, photographs or other materials, which are in Defendants' possession or under their control;

(4) That the Court enter an order requiring a full and complete accounting of all amounts due and owing to Plaintiff as a result of Defendants' illegal activities;

(5) That the Court order Defendants to pay Plaintiff's general, special, actual and statutory damages as follows:

- a. Plaintiff's damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Plaintiff's copyrights;

1 b. Plaintiff's damages and Defendants' profits pursuant to Cal. Civ. Code § 3344 or in the
2 alternative statutory damages pursuant to Cal. Civ. Code § 3344; and

3 c. Plaintiff's damages and Defendants' profits pursuant to California common law and
4 disgorgement pursuant to California Bus. & Prof. Code § 17200 et seq.
5

6 (6) That the Court order Defendants' to pay punitive damages pursuant to Cal. Civ. Code §
7 3344.

8 (7) That the Court order Defendant to pay Plaintiff both the costs of this action and the
9 reasonable attorney's fees incurred by it in prosecuting this action pursuant to 17 U.S.C. § 504,
10 California Bus. & Prof. Code § 17200 et. seq., and Cal. Civ. Code § 3344(a).
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12 (8) That the Court grant to Plaintiff such other and additional relief as is just and proper.
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14 Dated:

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16 Respectfully submitted,

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18 GILL SPERLEIN,
19 Attorney for Plaintiff
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